



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

[SATS No. AR-039-FOR; Docket ID: OSM-2011-0016]

Arkansas Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Arkansas regulatory program (Arkansas program) and the Arkansas abandoned mine land reclamation plan (Arkansas plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Arkansas proposes to revise substantial portions of their regulatory program and abandoned mine land plan, make grammatical changes, correct punctuation, revise dates, and add citations. The proposed amendment consists of substantive changes to Arkansas regulations regarding Subchapter A -

General Requirements; Subchapter G - Surface Coal Mining and Reclamation Operations
Permits and Coal Exploration Procedures Systems; Subchapter J - Bond and Insurance
Requirements for Surface Coal Mining and Reclamation Operations; Subchapter K - State
Program Performance Standards; Subchapter M - Training Programs for Blasters and Members
of Blasting Crews, and Certification Programs for Blasters; and Subchapter R - Abandoned Mine
Land Reclamation.

This document provides the times and locations that the Arkansas program, Arkansas plan, and
the proposed amendment are available for your inspection, the comment period during which
you may submit written comments on the amendment, and the procedures that we will follow for
the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., c.s.t., [Insert date
30 days after the date of publication in the FEDERAL REGISTER]. If requested, we will hold a
public hearing on the amendment on [Insert date 25 days after date of publication in the
FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4:00 p.m., c.s.t. on
[Insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by SATS No. AR-039-FOR, by any of
the following methods:

- Mail/Hand Delivery: Alfred L. Clayborne, Director, Tulsa Field Office, Office of Surface
Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa,

Oklahoma 74128-4629

- Fax: (918) 581-6419
- Federal eRulemaking Portal: The amendment has been assigned Docket ID OSM-2011-0016. If you would like to submit comments go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Comment Procedures heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to review copies of the Arkansas regulations, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office; or you can view the full text of the program amendment available for you to read at www.regulations.gov.

Alfred L. Clayborne, Director

Tulsa Field Office

Office of Surface Mining Reclamation and Enforcement

1645 South 101st East Avenue, Suite 145

Tulsa, Oklahoma 74128-4629

Telephone: (918) 581-6430

In addition, you may review a copy of the amendment during regular business hours at the following location:

Arkansas Department of Environmental Quality

5301 Northshore Drive

North Little Rock, Arkansas 72118-5317

Telephone: (501) 682-0744

FOR FURTHER INFORMATION CONTACT: Alfred L. Clayborne, Director, Tulsa Field Office. Telephone: (918) 581-6430. Email: aclayborne@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Arkansas Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Arkansas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior (Secretary) conditionally approved the Arkansas program effective November 21, 1980. You can find background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program in the November 21, 1980, Federal Register (45 FR 77003). You can find later actions on the Arkansas program at 30 CFR 904.10, 904.12, 904.15.

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary of the Interior approved the Arkansas plan on May 2, 1983. You can find background information on the Arkansas plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the May 2, 1983, Federal Register (48 FR 19710). You can find later actions concerning the Arkansas plan at 30 CFR 904.25 and 904.26.

II. Description of the Proposed Amendment

By letter dated August 26, 2011 (Administrative Record No. AR-571.06), Arkansas submitted a proposed amendment to its program and plan pursuant to SMCRA. Arkansas submitted the amendment in response to a September 30, 2009 (Administrative Record No. AR-571), letter from OSM in accordance with 30 CFR 732.17 (c). Arkansas is also making substantial changes to other sections of its regulatory program and its abandoned mine land plan on its own initiative. The full text of the program amendment is available for you to read at the locations listed above under ADDRESSES or at www.regulations.gov.

Arkansas proposes to revise every section title throughout its code by replacing “Section” with “Reg.20.” and by deleting the title dates. Arkansas also plans to replace the references to “Section” with “Reg.20.,” replace the word “Director” with “Department,” and replace the word “Chapter” with “Code” throughout their regulations.

Arkansas proposes to revise substantial portions of their regulatory program and abandoned mine land plan, make grammatical changes, correct punctuation, revise dates, and add citations.

The Arkansas regulations that contain substantive changes are listed in the table below.

SUBSTANTIVE CHANGES TABLE	
ARKANSAS REG.20. SECTIONS	TITLE
SUBCHAPTER A - GENERAL PART 700 - GENERAL	
700.11, 700.12, and 700.16	Rulemaking Initiated by the Commission; Petitions to Initiate Rulemaking; and Employee Protection
PART 701 STATE PROGRAM	
701.5	Definitions

PART 702 EXEMPTION FOR COAL EXTRACTION INCIDENTAL TO THE EXTRACTION OF OTHER MINERALS	
702.13	Public Availability of Information
PART 705 - RESTRICTIONS ON FINANCIAL INTERESTS OF ENFORCEMENT PERSONNEL	
705.1	Scope
PART 762 - CRITERIA FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS	
762.5	Definition
SUBCHAPTER G - SURFACE COAL MINING AND RECLAMATION OPERATIONS PERMITS AND COAL EXPLORATION PROCEDURES SYSTEMS	
PART 770 - GENERAL	
770.5	Definitions
PART 771 - GENERAL REQUIREMENTS FOR PERMITS AND APPLICATIONS	
771.25	Permit Fees
PART 776 - GENERAL REQUIREMENTS FOR COAL EXPLORATION OPERATIONS	
776.17	Public Availability of Information
PART 778 - SURFACE MINING PERMIT APPLICATIONS - MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE AND RELATED INFORMATION	
778.1, 778.2, 778.4, 778.6, 778.9, 778.11, 778.12, 778.13, 778.14, 778.17, 778.20, 778.21, and 778.22	Scope; Objectives; Responsibility; Applicability, Certifying and Updating Existing Permit Application Information; Applicant and Operator Information; Permit History Information; Property Interest Information; Violation Information; Permit Term Information; Identification of Location of Public Office for Filing of Application; Newspaper Advertisement and Proof of Publication; and Facilities or Structures Used in Common
PART 782 - UNDERGROUND MINING PERMIT APPLICATIONS - MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION	
782.1 - 782.21	Scope; Objectives; Responsibilities; Applicability; Identification of Interests; Compliance Information; Right of Entry and Operation Information; Relationship to Areas Designated Unsuitable For Mining; Permit Term Information; Personal Injury and Property Damage Insurance Information; Identification of Other Licenses and Permits; Identification of Location of Public Office for Filing of Application; and Newspaper Advertisement and Proof of Publication
PART 785 - REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING	
785.14, 785.16, 785.18, and	Mountaintop Removal Mining; Permits Incorporating

785.25	Variances from Approximate Original Contour Restoration Requirements for Steep Slope Mining; Variances for Delay in Contemporaneous Reclamation Requirements in Combined Surface and Underground Mining Operations; and Lands Eligible for Remining
PART 786 - REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING	
786.1, and 786.3 - 786.31	Scope; Responsibilities; Pre-Application Conference; Regulatory Coordination with Requirements under Other Laws; Public Participation in Permit Processing; Review of Permit Applications; General Provisions for Review of Permit Application Information and Entry of Information into AVS; Review of Applicant, Operator, and Ownership and Control Information; Review of Permit History; Review of Compliance History; Permit Eligibility Determination; Unanticipated Events or Conditions at Remining Sites; Eligibility for Provisionally Issued Permits; Written Findings for Permit Application Approval; Performance Bond Submittal; Permit Conditions; Permit Issuance and Right of Renewal; Initial Review and Finding Requirements for Improvidently Issued Permits; Notice Requirements for Improvidently Issued Permits; Suspension or Rescission Requirements for Improvidently Issued Permits; Eligibility to Challenge Ownership or Control Listings and Findings; Procedures for Challenging an Ownership or Control Listing or Finding; Burden of Proof for Ownership or Control Challenges; Written Decision on Challenges to Ownership or Control Listings or Findings; Conditions of Permits: Environment, Public Health, and Safety; Improvidently Issued Permits: General Procedures; and Improvidently Issued Permits: Recision Procedures
787.12	Judicial Review
PART 788 - REVISION; RENEWAL; TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS; POST-PERMIT ISSUANCE REQUIREMENTS; AND OTHER ACTIONS BASED ON OWNERSHIP, CONTROL, AND VIOLATION INFORMATION	
788.5, 788.9, 788.10, 788.11, 788.13, 788.14, 788.15, 788.16, 788.17, 788.18, and 788.19	Definitions; Post-Permit Issuance Requirements and Other Actions Based on Ownership, Control, and Violation Information; Post-Permit Issuance Requirements for Permittees; Review of Permits; Permit Renewals: General Permit Renewals: Completed Applications; Permit Renewals: Terms; Permit Renewals: Approval or Denial; Transfer,

	Assignment, or Sale of Permit Rights; Transfer, Assignments, or Sale of Permit Rights; Transfer, Assignments, or Sale of Permit Rights: Obtaining Approval; and Requirements for New Permits for Persons Succeeding to Rights Granted Under a Permit
SUBCHAPTER J - BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS	
PART 800 - BONDS AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER THE STATE PROGRAM	
800.23 and 800.40	Self-bonding; and Requirement to Release Performance Bonds
SUBCHAPTER K - STATE PROGRAM PERFORMANCE STANDARDS	
PART 810 - STATE PROGRAM PERFORMANCE STANDARDS GENERAL	
810.11	Applicability
PART 816 - PERMANENT PROGRAM PERFORMANCE STANDARDS – SURFACE MINING ACTIVITIES	
816.11, 816.13, 816.14, 816.22, 816.41, 816.42, 816.43, 816.44, 816.46, 816.48, 816.49, 816.50-S, 816.50-U, 816.51-S, 816.52-S, 816.53, 816.54, 816. 55, 816.61-U, 816.64-U, 816.68, 816.71, 816.100, 816.101-S, 816.101-U, 816.102, 816.106, 816.107, 816.113, 816.114, 816.116, 816.121-U, 816.122-U, 816.133, 816.180, and 816.181	Signs and Markers; Casing and Sealing of Drilled Holes General Requirements; Casing and Sealing of Drilled Holes: Temporary; Topsoil and Subsoil; Hydrologic Balance: Protection; Hydrologic Balance: Water Quality Standards and Effluent Limitations; Hydrologic Balance: Diversions; Hydrologic Balance: Stream Channel Diversions; Hydrologic Balance: Siltation Structure; Hydrologic Balance: Acid-forming and Toxic-forming Spoil; Impoundments, Hydrologic Balance: Ground Water Protection; Hydrologic Balance: Underground Mine Entry and Access Discharges; Hydrologic Balance: Protection of Groundwater Recharge Capacity; Hydrologic Balance: Surface And Groundwater Monitoring; Hydrologic Balance: Transfer Of Wells; Hydrologic Balance: Water Rights and Replacement; Hydrologic Balance: Discharge of Water into an Underground Mine; Use of Explosives: General Requirements; Use of Explosives: Public Notice of Blasting Schedule; Use of Explosives: Records of Blasting Operations; Disposal of Excess Spoil: General Requirements; Contemporaneous Reclamation; Backfilling and Grading: Time and Distance Requirements; Backfilling and Grading: General Requirements; Backfilling and Grading: General Grading Requirements; Backfilling and Grading: Previously Mined Areas; Backfilling and Grading: Steep Slopes; Revegetation: Timing; Revegetation: Mulching and Other Soil Stabilizing Practices; Revegetation: Standards for Success; Subsidence Control: General

	Requirements; Subsidence Control: Public Notice; Postmining Land Use; Utility Installations; and Support Facilities
Part 817- PERMANENT PROGRAM PERFORMANCE STANDARDS – UNDERGROUND MINING ACTIVITIES	
817.1 - 817.181	Scope; Objectives; Signs and Markers; Casing and Sealing of Exposed Underground Openings: General Requirements; Casing and Sealing of Underground Openings: Temporary; Casing and Sealing of Underground Openings: Permanent; Topsoil and Subsoil; Hydrologic Balance: Protection; Hydrologic Balance: Water Quality Standards and Effluent Limitations; Hydrologic Balance: Diversions; Hydrologic Balance: Sediment Control Measures; Hydrologic Balance: Siltation Structures; Hydrologic Balance: Discharge Structures; Impoundments Hydrologic Balance: Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities; Hydrologic Balance: Surface Activities in or Adjacent to Perennial or Intermittent Streams; Coal Recovery; Use of Explosives: General Requirements; Use of Explosives: Pre-blasting Survey; Use of Explosives: Public Notice of Blasting Schedule; Use of Explosives: Blasting Signs, Warnings, and Access Control; Use of Explosives: Control of Adverse Effects; Use of Explosives: Seismographic Measurements; Use of Explosives: Records of Blasting Operations; Disposal of Excess Spoil: General Requirements; Disposal of Excess Spoil: Valley Fills/Head-of Hollow Fills; Disposal of Excess Spoil: Durable Rock Fills; Disposal of Excess Spoil: Pre-Existing Benches; Coal Mine Waste: General Requirements; Coal Mine Waste: Refuse Piles; Coal Mine Waste: Impounding Structures; Coal Mine Waste: Burning and Burned Waste Utilization; Disposal of Noncoal Mine Wastes; Stabilization of Surface Areas; Protection of Fish, Wildlife, and Related Environmental Values; Slides and Other Damage; Contemporaneous Reclamation; Backfilling and Grading: General Requirements; Backfilling and Grading: Previously Mined Areas; Backfilling and Grading: Steep Slopes; Revegetation: General Requirements; Revegetation: Timing; Revegetation: Mulching and Other Soil Stabilizing Practices; Revegetation: Standards for Success; Subsidence Control: General Requirements; Subsidence Control:

	Public Notice; Cessation of Operations: Temporary; Cessation of Operations: Permanent; Postmining Land Use; Roads: General; Roads: Primary Roads; Utility Installations; and Support Facilities
PART 818 - SPECIAL STATE PROGRAM PERFORMANCE STANDARDS - CONCURRENT SURFACE AND UNDERGROUND MINING	
818.1 - 818.15	Scope; Objective; Responsibilities; Applicability; Compliance with Variance; and Additional Performance Standards
PART 819 - SPECIAL STATE PROGRAM PERFORMANCE STANDARDS – AUGER MINING	
819.11, 819.1, 819.15, 819.17, 819.19, and 819.21	Auger Mining; Auger Mining: Coal Recovery; Auger Mining: Hydrologic Balance; Auger Mining: Subsidence Protection; Auger Mining: Backfilling and Grading; and Auger Mining: Protection of Underground Mining
PART 823 - SPECIAL STATE PROGRAM PERFORMANCE STANDARDS - OPERATIONS ON PRIME FARMLAND	
823.15	Revegetation and Restoration of Soil Productivity
PROCEDURES PART 842 - INSPECTIONS	
842.11	Inspections
PART 843 - ENFORCEMENT	
843.11, 843.15, and 843.16	Cessation Orders; Informal Public Hearing; and Formal Review of Citations
PART 845 - CIVIL PENALTIES	
845.11, 845.13, 845.15, 845.17, 845.18, 845.19, and 845.20	How Assessments are Made; Point System for Penalties; Assessment of Separate Violations for Each Day; Procedures for Assessment of Civil Penalties; Procedures for Assessment Conference; Request for Adjudicatory Public Hearing; and Final Assessment and Payment of Penalty
PART 846 - INDIVIDUAL CIVIL PENALTIES	
846.5, 846.14, 846.17, and 846.18	Definitions; Amount of Individual Civil Penalty; Procedure for Assessment of Individual Civil Penalty; and Payment of Penalty
PART 847 - ALTERNATIVE ENFORCEMENT	
847.1 - 847.16	Scope; General Provisions; Criminal Penalties; and Civil Actions for Relief
SUBCHAPTER M - TRAINING PROGRAMS FOR BLASTERS AND MEMBERS OF BLASTING CREWS, AND CERTIFICATION PROGRAMS FOR BLASTERS	
PART 850 - PROGRAMS	
850.16	Reciprocity
SUBCHAPTER R - ABANDONED MINE LAND RECLAMATION	
PART 874 - GENERAL RECLAMATION REQUIREMENTS	
874.12, 874.13, and 874.16	Eligible Lands and Water; Reclamation Objectives and Priorities; and Contractor Eligibility

PART 877 - RIGHTS OF ENTRY	
877.11, 877.12, 877.13, and 877.14	Consent to Entry; Entry for Studies or Exploration; Entry and Consent to Reclaim; and Entry for Emergency Reclamation
PART 879 - ACQUISITION, MANAGEMENT AND DISPOSITION OF LANDS AND WATER	
879.11, 879.12, 879.13, and 879.15	Land Eligible for Acquisition; Procedures for Acquisition; Acceptance of Gifts of Land; and Disposition of Reclaimed Lands
PART 882 - RECLAMATION ON PRIVATE LAND	
882.13	Liens
PART 900 - PROCEDURES FOR HEARING AND APPEALS	
900.2, 900.3, 900.4, 900.5, 900.6, 900.7, 900.9, and 900.12	Filing of Documents; Form of Documents; Service and Proof of Service; Intervention, Voluntary Dismissal; Motions; Advancement of Proceedings; and Other Procedures
PART - 920 ADJUDICATORY HEARINGS	
920.1, 920.2, 920.3, 920.7, and 920.8	Presiding Officers; Powers of Presiding Officers; Notice of Hearing; Initial Orders and Decisions; and Effect of Initial Order or Decision
PART 930 - DISCOVERY	
930.1	Discovery
PART 940 - TEMPORARY AND EXPEDITED REVIEW	
940.3	Procedures for Expedited Review
PART 960 - APPEALS	
960.2 - 960.7	Appeals: How Taken; Answer; Stay Pending Appeal; Certified Transcript; Record on Appeal; and Extended Time for Appeals

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether Arkansas's proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of Arkansas State program.

Under the provisions of 30 CFR 884.15(a), we are requesting comments on whether the amendment satisfies the applicable State reclamation plan approval criteria of 30 CFR 884.14. If we approve the amendment, it will become part of the Arkansas plan.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment - including your personal identifying information - may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable

accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866 - Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Ervin J. Barchenger, Regional Director
Mid-Continent Region

__October 14, 2011__

Date

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